United Nations CAT/C/56/D/643/2014

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
16 February 2016
Original: English

Committee against Torture

Communication No. 643/2014

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	Mr. U. (represented by counsel, Nima Rostami)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	5 December 2014 (initial submission)
Date of present decision:	23 November 2015
Subject matter:	Deportation to Uzbekistan
Procedural issues:	Examination by another procedure of international investigation or settlement
Substantive issues:	Risk of torture upon return to country of origin
Articles of the Convention:	3

GE.16-02180(E)

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Complaint No. 643/2014*

Submitted by:	Mr. U. (represented by counsel, Nima Rostami)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	5 December 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2015,

Having concluded its consideration of the admissibility of complaint No. 643/2014, submitted to it by Mr. U. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is Mr. U., an Uzbek national, born in 1982. He claims that his deportation to Uzbekistan would constitute a violation by Sweden of article 3 of the Convention. The complainant is represented by counsel.

1.2 On 14 January 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from expelling the complainant while his complaint was being considered. The State party complied with the Committee's request.

1.3 On 27 March 2015, at the request of the State party, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the complaint separately from the merits.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Sapana Pradhan-Malla, Jens Modvig, George Tugushi and Kening Zhang.

Facts as presented by the complainant

2.1 The complainant is from Tashkent, Uzbekistan. He is a devout Muslim and prays five times a day. On a number of occasions, he had been stopped by police who urged him to shave off his beard. He had previously worked as a driver in the military, participated in the events of 2005 in Andijan, and worked for the Government.

2.2 On 30 April 2013, the complainant was stopped by two police officers on his way home from a mosque. He was questioned because he had religious attributes on him. As he could not show his passport, he was taken to a police car. In the car, he became agitated and started to criticize the Government and the ruling regime. The police officers became violent and, in self-defence, the complainant beat them and fled.

2.3 On 1 May 2013, the complainant left the country illegally and travelled to Sweden. He arrived in Sweden on 12 May 2013 and applied for asylum on the same day. On 27 September 2013, the Swedish Migration Board rejected his application because it considered that the complainant's story lacked credibility. On an unspecified date, the complainant appealed the Board's negative decision. The appeal was dismissed by the Migration Court on 4 February 2014. On an unspecified date, the complainant applied for leave to appeal the Migration Court decision, which was denied by the Migration Court of Appeal on 7 March 2014.

2.4 On 2 October 2014, the complainant married a Ukrainian woman in a Muslim religious ceremony. She also had ongoing asylum proceedings before the Swedish migration authorities. On an unspecified date, the complainant was detained by the Swedish migration authorities.

2.5 On 19 November 2014, the complainant applied for a "suspension and stay of execution" and presented new circumstances before the Swedish Migration Board. He submitted that he had been in contact with his mother in Uzbekistan and was told that his father and brothers had been questioned by the police about his whereabouts and that he was going to be arrested if he returned. The complainant submits that the reason why the police were still looking for him was because he had criticized the President of Uzbekistan and his regime on the Internet. He had posted a critical video on YouTube in support of a person who opposed the President's regime. On 27 November 2014, the Migration Court rejected the complainant's application and concluded that the information presented by him was not "new". On an unspecified date, the complainant filed an application to the Migration Court of Appeal for leave to appeal, which was dismissed by the Court on 5 December 2014.

2.6 On 11 December 2014, the complainant submitted that he had lodged an application and a request for interim measures before the European Court of Human Rights on 26 November 2014. On 27 November 2014, the Court rejected the complainant's request for interim measures, stating that:

> In addition, in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court (...), sitting in a single-judge formation, found that they did not disclose any appearance of violation of the rights and freedoms set out in the Convention or its Protocols and declared your application inadmissible.

In this connection, the complainant notes that the Court did not examine his case in substance. He also notes that he had approached the Court with his application and request for interim measures before having exhausted domestic remedies, as the Swedish

Migration Court and the Migration Court of Appeal had not yet examined the new circumstances presented.[1]

The complaint

3.1 The complainant submits that, by forcibly returning him to Uzbekistan, the State party would breach its obligations under article 3 of the Convention. His removal would expose him to persecution, torture and inhumane treatment by local authorities. In this regard, the complainant points out that the general human rights situation in Uzbekistan is such that the use of torture and other cruel and inhuman treatment is widespread.

3.2 The complainant also claims that, should he be deported, he might be separated from his wife for a prolonged period of time. In addition, he claims that his health condition has been deteriorating.

State party's observations on admissibility

4.1 By a note verbale of 2 February 2015, the State party objected to the admissibility of the complaint pursuant to article 22 (5) (a) of the Convention and maintained that the same matter had already been examined by the European Court of Human Rights.

4.2 The State party points out that the complainant lodged an application before the European Court, in which he noted the alleged risk he would be subjected to if returned to Uzbekistan. It maintains that his application before the Court and his complaint before the Committee refer to the same parties, same facts and same substantive rights. In other words, the present communication concerns the same matter as the complaint lodged by the complainant to the Court.[2]

4.3 The State party notes that the European Court declared his application inadmissible because it did not disclose any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms or its Protocols. Against this background and contrary to the complainant's view, the State party holds that the wording of the decision by the Court strongly indicates that the complainant's application was declared inadmissible for reasons related to the substance of his application, rather than on purely procedural grounds. Accordingly, it must be considered that the Court has examined the complainant's application within the meaning of article 22 (5) (a) of the Convention.[3] Should the Committee consider that the Court's decision is unclear, the State party invites it to contact the Court in order to clarify the issue.

4.4 Should the Committee consider the complaint to be admissible under article 22 (5) (a) of the Convention, the State party maintains that it would like to have an opportunity to further elaborate on the question whether the communication could be considered manifestly ill-founded under rule 113 (b) of the Committee's rules of procedure.

Complainant's comments on the State party's observations on admissibility

5.1 On 6 March 2015, the complainant submitted his comments on the State party's observations. He confirmed that he had applied to the European Court of Human Rights and had requested a stop to his deportation; however, on 27 November 2014, the Court found

[1] See para. 2.5 above.

[2] The State party refers to communications No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, paras. 6.1-6.2; and 140/1999, *A.G. v. Sweden*, decision adopted on 2 May 2000, paras. 6.2 and 7.

[3] The State party refers to Human Rights Committee, communications No. 989/2001, *Kollar v. Austria*, decision of inadmissibility adopted on 30 July 2003, para. 8.4; and No. 584/1994, *Valentijn v. France*, decision of inadmissibility adopted on 22 July 1996, para. 5.2.

that the facts as presented by him did not disclose violations of the European Convention. He reiterated that the Court declared his application inadmissible and noted the Court's wording that, in the light of all the material in its possession and in so far as the matters complained of were within its competence, the Court, sitting in a single-judge formation, found that they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols and declared the complainant's application inadmissible. Accordingly, the complainant maintained that it cannot be asserted that the Court had examined his application in substance. Therefore, there are no obstacles to the Committee's examination of the present complaint on the merits.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

6.2 The Committee takes note of the State party's objection that the complaint should be declared inadmissible under article 22 (5) (a) of the Convention because the same matter was already examined by the European Court of Human Rights. The Committee also takes note of the complainant's allegations that his application was not examined by the Court because its inadmissibility decision only stated that his application "did not disclose any appearance of violation" and that its limited reasoning does not allow the Committee to conclude that it considered the merits of the case.

6.3 The Committee recalls[4] its consistent jurisprudence that it will not consider any complaint from an individual under article 22 (5) (a) of the Convention unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee considers that a complaint has been, and is being examined, by another procedure of international investigation or settlement if the examination of a complaint by another procedure relates or is related to the "same matter" within the meaning of article 22 (5) (a), that is, the same parties, the same facts and the same substantive rights.[5]

6.4 The Committee observes that the present complaint raises claims under article 3 of the Convention mainly in relation to the alleged risk of torture to which the complainant would be subjected if removed to Uzbekistan. It also observes that, in his comments concerning the State party's observations on admissibility, the complainant confirmed that he had also applied to the European Court and had requested a stop to his deportation to Uzbekistan. Accordingly, in the light of the information contained in the case file, the Committee concludes that the application submitted by the complainant to the European Court on 26 November 2014 concerned the same person, was based on the same facts and related to the same substantive rights as those invoked in the present complaint. The Committee therefore considers that the complainant's application was already examined by that international procedure in the sense of article 22 (5) (a) of the Convention, and concludes that the present communication is inadmissible under article 22 (5) (a) of the Convention.

[4] See, for example, communications No. 305/2006, *A.R.A. v. Sweden*, para. 6.1; and No. 642/2014, *M.T. v. Sweden*, decision of inadmissibility adopted on 7 August 2015, para. 8.3.

[5] See, for example, communications No. 247/2004, *A.A. v. Azerbaijan*, decision of inadmissibility adopted on 25 November 2005, paras. 6.8; No. 479/2011, *E.E. v. the Russian Federation*, decision of inadmissibility adopted on 24 May 2013, para. 8.4; and No. 642/2014, *M.T. v. Sweden*, decision of inadmissibility adopted on 7 August 2015, para. 8.3.

6.5 In view of the above, the Committee considers that the requirement of article 22 (5) (a) of the Convention has not been met in the present case.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (a) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.